

Meeting Date: 5-9-06

Santa Clara



AGENDA REPORT

City of Santa Clara, California

Agenda Item #

4F2



DATE: May 4, 2006

TO: City Manager for Council Information

FROM: Deputy City Manager

SUBJECT: Comments Made by City Manager, Fire Chief and Chief of Police at the Community Forums Held on May 2, 2006 and May 3, 2006 regarding Firefighters' Union and Police Officers' Association's Request to Place Binding Arbitration on the November 2006 Ballot

The City has been requested to provide copies of the materials used by the City Manager, Fire Chief and Chief of Police to make their remarks at the Community Forums held May 2, 2006 at the Santa Clara Convention Center and May 3, 2006 at the Central Park Library on Binding Arbitration. They are attached.

A handwritten signature in cursive script, reading "Carol McCarthy".

Carol McCarthy
Deputy City Manager

APPROVED:

A handwritten signature in cursive script, reading "Jennifer Sparacino".

Jennifer Sparacino
City Manager

Documents Related to this Report:

- 1) Material used by the City Manager at the May 2 and 3, 2006 Binding Arbitration Community Forums***
- 2) Material used by the Fire Chief at the May 2 and 3, 2006 Binding Arbitration Community Forums***
- 3) Material used by the Chief of Police at the May 2 and 3, 2006 Binding Arbitration Community Forums***

BINDING ARBITRATION COMMUNITY FORUMS

May 2nd and May 3rd, 2006

Jennifer Sparacino, City Manager

Thank you, Chief Lodge and Chief Kleinheinz. I have major concerns about the Binding Interest Arbitration proposal from the Police Officers' Association and the Firefighter Union; and recommend strongly that the proposal be withdrawn. Under Binding Interest Arbitration critical decision-making authority is taken away from the City and placed in the hands of an outside arbitrator, someone not responsible to the community – the voters and taxpayers – someone who does not have to deal with the consequences of the decision – how it affects the delivery of City services to our residents and businesses

Why would the City support the loss of local control when local control is fundamental to fulfilling our responsibility as a municipal government?

The City of Santa Clara has over 90% approval rating from its residents who like and appreciate the services they receive from us. This high level of approval is the result of informed decisions made over the years by our elected officials and experienced, professional City staff. Our community gives us a high approval rating because we understand their needs and priorities and make decisions based on that knowledge. That's what local control is about. Binding Interest Arbitration would give away that local control.

The City of Santa Clara is a Charter City with a Council-Manager form of government. Our City Charter is such an important document that it cannot be changed without a vote of the people.

Santa Clara's Charter establishes the way our local government democracy works. It includes a comprehensive set of checks and balances that enable us to operate in the best way possible.

As our Charter is written now, the City Council has the final decision-making authority over labor contracts and the City budget, as well as a general grant of power as the elected representatives of the people.

City management is responsible to make policy recommendations, run the City on a day-to-day basis, hire and manage employees, develop and monitor the budget.

This Charter Amendment for Binding Interest Arbitration will impact at least 13 major sections in the City Charter as well as 7 other definitive policy and procedure documents that determine how our City is operated. Always in the past when a significant change to the Charter has been proposed, a Citizens Review Committee has been convened to study the issues. This proposal circumvents the work of a Citizens Charter Review Committee to study and evaluate how this proposed amendment will be reconciled with the Charter. It is unprecedented to make a change in the Charter of this scope, depth and breadth without a study and recommendation from a Blue Ribbon Committee of citizens. It is a thoughtful process that takes time, and that is the way it should be. The Charter is not something that should be changed without a study by our citizens, and a deep understanding of the consequences.

Binding arbitration will also put the City's budget at risk. When an outside arbitrator makes a decision regarding salaries, wages, benefits and operational issues, the City's budget is unavoidably affected. The arbitrator is only looking at one piece and not understanding the domino effect that will result.

The biggest impact will be on the overall City General Fund Budget. The City's General Fund supports not only Police and Fire, but Parks and Recreation, Streets, Library, Senior Center, Youth and Teen Activity Centers, Public Works and Capital Improvement Projects. The 2006/07 City General Fund Budget includes over \$65 million dollars to operate the Police and Fire Departments; that is more than 50% of the entire City's General Fund Budget. If an outside arbitrator awards more money to Police and Fire, or requires a change in operations, the City would be mandated to implement the arbitrators' decisions. We would have no choice, no flexibility. Since a limited amount of money is available to support the General Fund, if Police and Fire are mandated by an arbitrator to get more, we only have two choices -- either other services get less -- less money for library, parks, senior and teen programs, street repair, and so on -- or fees and taxes would have to be increased to generate more revenue. As City Manager, for the last 20 years, I have been responsible in a leadership role for developing the City budget. I know first hand that there are many competing demands for City dollars. I know first hand that being fair in the allocation of resources is a delicate balancing act. I understand the complexity of our City budget and how budget decisions create the excellent service levels Santa Clara enjoys.

Because of the extremely difficult financial crises that the City and the state have experienced over the last 4 years, we are working with less revenues/money for the General Fund than in the past. It's a "shrinking pie." Through these difficult financial times, the City Council and City management have made strong efforts to find that unique funding balance that is right for Santa Clara. Outside decision-makers don't see that big picture -- they don't live it day-by-day. They don't talk with our residents or see the impact of their decisions on the community. They should not be entrusted with critical decisions that belong to this community -- decisions that belong with our elected leaders and management team.

Binding Interest Arbitration takes away local control and budget decision-making for the City Council and management, now and for all future City Council Members and Managers. It would be a sad legacy and burden to place on future generations.

What is best for the overall good of the Santa Clara community? Local decisions by representatives of the community who know our needs and priorities, or outside arbitrators who do not have to live with the consequences? This is why the Police Chief, Fire Chief and I, as Santa Clara's City Manager, do not support Binding Interest Arbitration.

That concludes our opening staff presentation and comments.

Thank you.

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BINDING ARBITRATION COMMUNITY FORUMS

May 2nd and 3rd, 2006

Phil Kleinheinz, Fire Chief

Good evening League of Women Voters, members of the panel, and citizens of Santa Clara. Welcome to our binding interest arbitration forum.

At first glance, binding interest arbitration might seem like a good idea. Proponents of binding arbitration will claim that it is fair and that it levels the playing field during negotiations. Initially, that sounds perfectly logical. Therein lies the problem with this debate.

This argument insinuates that the current system in Santa Clara is unfair. Nothing could be further from the truth. Santa Clara has a long history of setting the standard when it comes to treating employees in a fair and respectful manner. For example, going back twenty-five years, the cost of living has increased by an average of 3.5% per year. Over that same period of time, firefighter salaries increased by an average of 5.7% per year. This picture does not change even when looking at a shorter period of time. For instance, beginning in the year 2000, the cost of living increased at an average rate of 2.9% per year. Over the same period of time, firefighter salaries increased an average of 4.4% per year. In addition to our salary increases, we improved our retirement plan significantly.

I hope that no one misunderstands the point that I am making. I think that the Santa Clara Fire Department has the best employees in the business. I think it is great that our City can compensate us at these high levels and I hope that never changes. But the fact of the matter is, to say that Santa Clara has not been fair with its employees or that the negotiation playing field is not level is just plain wrong.

Our City is committed to negotiating in good faith. We use a comprehensive process that includes voluntary mediation as an option when we get to a difficult issue. Voluntary mediation uses a professional mediator to bring the parties together to help develop a collaborative solution. Voluntary mediation was successfully used in the last Police Officers' Association negotiations. It's a great tool when you want to end the day with both sides feeling good about how your differences were resolved.

If asked, today's firefighters would probably agree that they have been treated fairly in the past. But they may say that they want binding arbitration just in case things in Santa Clara change and for some unforeseen reason, they are not treated fairly. Here lies the heart of the problem.

Binding arbitration is what changes things. It forces both sides into a competitive, oppositional style of negotiation as opposed to a collaborative style. You see, negotiations are not easy. They never have been and they never will be. The reason is because two sides enter into discussions with different and competing interests. The firefighters union is in negotiations to protect the interests of their members, which is the right thing for them to do. Management is in negotiations to protect the interests of the community, which is the right thing for them to do. This does not mean that firefighters do not care about the residents nor does it mean that management does not care about the firefighters. Both groups do care but their primary interests are not the same.

Ideally, both sides work in collaboration and cooperation to achieve the most for both sides – to find win-win solutions. We have a long history of doing that and I can cite some very specific examples. I can also cite examples of difficult negotiations that most likely would have resulted in binding arbitration if that crutch were available to either labor or management. If arbitration was used, one side would have won and one side lost. Instead, what we were able to achieve through the

collaborative process was that both sides won. It was not easy but there was no weapon for either side to use.

Whenever binding arbitration is used, it attacks the very fabric of the labor management relationship. A perfect example occurred in a neighboring fire department about ten years ago when an arbitrator changed the fire department work schedule, which resulted in the firefighters losing their 4 - 6 schedule. A lead negotiator for that labor group told me personally that his union members were very unhappy with the arbitrator's decision. They resented the new work schedule and were angry.

Binding arbitration is not about fairness; it is about using a drastic measure to settle a dispute that might be resolved in a better way. The exact same item, the work schedule, that was lost by the firefighters in the neighboring department's arbitration, has come up twice in our own negotiations here in Santa Clara and like the neighboring department, it was an item of dispute. Because our negotiating process is different than the neighboring department's process, that item was taken off the table in the spirit of collaboration. Without collaboration and a willingness to work together, this issue may have gone to arbitration and the result probably would have been the same in Santa Clara - anger, resentment, and hard feelings. Instead, we used the long-standing practice of give and take in negotiations to find a mutually acceptable solution.

Proponents of binding arbitration will suggest that if we have binding arbitration, that they would not use it as long as the City continues to negotiate in good faith. The truth is, binding arbitration changes the style of negotiations for both sides. The approach is completely different because neither side can predict whether or not the other side will declare an impasse and thus invoke arbitration. In order to protect one's own interest, the negotiator must use a competitive style of negotiation as opposed to a collaborative style.

Collaboration is all about win-win. It is all about representing your own interest while respecting the interest of the other party. Competition is all about win-lose. It is about protecting your own interest at the expense of the other side. Competition in negotiations is regressive and unimaginative. Collaboration is progressive, responsible and is the ultimate complement to respect. It is not always easy, but it is always best.

This debate is incredibly difficult for all of us. It pits labor against management. It gives the appearance that labor and management disrespect each other. Nothing could be further from the truth. We have a great fire department because of our employees. They work hard, they care about our citizens, and their character values are exceptional. We hire excellent people and we keep them for an entire career. How does that happen here in Santa Clara when other departments have more problems such as lower morale, lower pay and benefits, and higher employee turnover? It happens because Santa Clara does care about their employees. They do treat them fairly. They always have, and I believe they always will.

It is now my pleasure to introduce our Police Chief, Steve Lodge.

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BINDING ARBITRATION COMMUNITY FORUMS

May 2nd and 3rd, 2006

Stephen D. Lodge, Chief of Police

The City of Santa Clara is a great city! We have excellent services, a very well-run government, a responsive City Council, and outstanding employees. I may be a bit biased, but I believe our Police Officers and Firefighters are among the best in the nation.

Because of all this, the City of Santa Clara is the envy of many other cities.

The reason we are here today discussing Binding Arbitration is because contract negotiations are difficult. As the Fire Chief pointed out, each side has its own interests at heart and sometimes these competing interests are difficult to resolve.

However, history shows us that we have been able to resolve our differences successfully. Our police and firefighters are well-compensated and have good working conditions.

There is certainly no shortage of people who want to be hired as firefighters and the police department continues to attract officers from other departments where they are not as well-compensated or do not have the good working conditions.

I understand the unions' desire to make negotiations less contentious. I just don't believe that Binding Arbitration is the answer. Binding Arbitration will have far-reaching impacts in a number of important areas beyond just negotiations.

In a moment, the City Manager will describe how Binding Arbitration will fundamentally change our City Charter - without any citizen review!!

As the Fire Chief described, Binding Arbitration will alter our employee relations.

Binding Arbitration will also change the role and responsibility of the City Council.

I believe that one of the most important things our City Council does is to establish the wages, benefits and working conditions of our employees. I believe that the Council has consistently done a good job in this area and that has directly resulted in the outstanding service our community receives.

We elect our Council members based on the belief that they will do what is best for our community. If they don't, we vote them out. Binding Arbitration places the final authority for wages, benefits and working conditions in the hands of an arbitrator---an arbitrator who was not elected by the people, was not selected because the voters thought they would do the best job for our community and is otherwise not accountable to Santa Clarans.

Those in support of Binding Arbitration will tell you this is an issue of fairness. I disagree.

To call this an issue of fairness is to say that the POA and the Firefighters have been treated unfairly in the past.

I can think of NO examples where they were treated unfairly, in fact, our Council and previous City Councils have been beyond fair and in many ways generous.

Those in support of Binding Arbitration will say that it is good to have an impartial panel decide labor disputes. I disagree. In fact, I think the people who make these decisions should be extremely partial - partial to what is best for Santa Clara and what is best for the members of our community and our employees. I believe those partial decision-makers are, by definition, our City Council members.

Another potential impact of binding arbitration on the City Charter is pretty personal to me because it relates to my responsibility as your elected Police Chief. The City Charter gives me the responsibility to carry out the mission of the police department. This includes working conditions, and binding arbitration changes that.

I believe the rationale for having an elected police chief is to provide the citizens with the ability to determine who will be making management decisions for the police department. Binding Arbitration changes that.

The voters in Santa Clara selected me to make those decisions. We should not consider contracting out my responsibilities for running the police department. I don't think an arbitrator should make decisions on how our police department is staffed or deployed.

I don't think an arbitrator should tell me how to respond to a crime problem in our community. That's my job! If the people of Santa Clara don't like the way I'm running the police department, they can vote me out. They can't vote out an arbitrator. In fact, they don't even get any input as to who the arbitrators will be.

Another impact Binding Arbitration would have on how we do business in Santa Clara is the change to the Civil Service Commission. Today, members of our community are chosen to be on the Commission and they determine fairness in discipline. Under Binding Arbitration those decisions would be made by people outside our community.

Finally, I do not believe that Binding Arbitration will accomplish what the unions are hoping for.

I do not believe it will make negotiations less contentious; in fact, I believe it will have the opposite effect.

Negotiations will be more contentious and less collaborative. Even worse, arbitration cases frequently go on for years before being resolved, so in addition to the contentiousness, we will also have the day-to-day uncertainty of how the issue will be settled.

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By Stephen D. Lodge, Chief of Police

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As much as I do not think binding arbitration will be beneficial for our employees, I feel it will be even worse for our community. The community will be responsible for paying the price of an arbitrator's decision. That is the whole binding part of binding arbitration. And if you, as voters, don't like the arbitrator's financial award or decision on a working condition, what can you do? Nothing! You would have no recourse.

Past decision-making is a good indicator of what the future decision-making will be. This community and our City Council has always seen to it that Public Safety is well taken care of.

I believe this will be the case in the future, which makes Binding Arbitration not only unnecessary, but also detrimental to how our city is governed.

A city like Santa Clara that is the envy of so many other cities, should not give up its right and responsibility to determine wages, benefits and working conditions for its employees.

Next, I would like to introduce our City Manager, Jennifer Sparacino, for her comments.

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